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OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314				
EXAMINER				
GRESO, AARON J				
ART UNIT		PAPER NUMBER		
1796				
NOTIFICATION DATE		DELIVERY MODE		
05/05/2009		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/563,967

Applicant(s)

BARA, ISABELLE

Examiner

AARON GRESO

Art Unit

1796

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/86)
Paper No(s)/Mail Date ____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____

DETAILED ACTION

This office Action is in response to the Arguments/Remarks filed 02-09-2009.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6, 8-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Rodelet US 6432912*. The reference discloses employing linear methyl siloxanes of the form methyl-[(CH₂)₂Si-O]_m-methyl (*Col 2 Line 15*). When m is 2, Applicant's hexamethyldisiloxane is described. When m is 3, Applicant's octamethyltrisiloxane is described. It should be noted that the Applicants siloxanes are employed individually in Examples 1, 3, 4, and 6 (*Col 3 and 4*). However, *Rodelet* teaches that the siloxanes may be employed individually, or as a mixture (*Col. 2, Lines 35-36*).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have employed any of the siloxanes described by *Rodelet* (including hexamethyldisiloxane and octamethyltrisiloxane) in the form of a mixture in any ratio (including the Instant Claims 1-3 ratios).

Claims 4 and 8-9 are also rejected as being unpatentable over *Rodelet* because reference also demonstrates a use of a fragancing bases in the range of 8-12% by

weight (*Col 3-4 Examples 1-4 and 6*) and these ranges are within the range indicated by Claims 4 and 8-9.

Claims 6 and 13-16 are suggested by *Rodelet* because esters are only needed when the perfume base is apolar (*Col 2 Line 60-62*). Therefore, if a polar base is used, the ester is not needed; this supports a prima facie obvious rejection for these claims.

Claims 7 and 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Rodelet* as applied to claims 1 and 2 above, and further in view of the teachings by *Krzysik (US 5160494)*.

Rodelet (US 6432912 Col 2 Lines 8-45) teaches compositions combining hexamethyldisiloxane and octamethyltrisiloxanes along with fragrant materials. However, *Rodelet* fails to teach the inclusion of such compositions along with an aerosol device. *Krzysik (US 5160494)*, on the other hand, teaches the use of silicone fluids, such as either hexamethyldisiloxane and octamethyltrisiloxane in combination with fragrance oils (*US 5160494 Col 3 Lines 58-60 and Col 4 Lines 28-44*), along with propellants (such as isobutane) that allow for comprising perfume formulations for "aerosol delivery" (*US 5160494 Col 4 Lines 5-10*). As such, it would be obvious to those in the art that aerosol delivery of a perfume would indicate that a perfume aerosol device would comprise a perfume or a perfume composition.

Response to Arguments

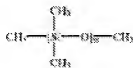
Applicant argues that insufficient information was provided in rejections to indicate the obviousness of 103 (a) rejections made concerning the *Rodelet* reference. Applicant argues that the Examiner has failed to establish a prima facie case for obviousness for failing to recognize the presently claimed ratio of siloxanes as results effective variables.

A. Rodelet

For Claim 1, Applicant asserts that the 103 a) Rodelet rejection reference is deficient because it lacks a teaching of a composition within the presently recited range, and that the reference fails to suggest such a composition.

Applicant's arguments filed for this Claim 1 section has been fully considered but are not persuasive.

Rodelet (Col 2 Lines 45-51) suggests using fragrance mixtures with siloxane ingredients and provides examples of mixing two of the suggested siloxane ingredients



of the following genus: in which m is 2, 3, 4, or 5 (*Col 2 Lines 8-19*) along with only 3 other dimethyl siloxane chemicals. When m is 2 or 3, these include those of the applicant's presently claimed hexamethyldisiloxane and octamethyltrisiloxane.

Rodelet exemplifies combinations of these chemicals (*Col 3 Lines 52-67 and Col 4 Lines 1-32*). In one case (*Col 3 Lines 52-68 and Col 4 Lines 1-32*), genus chemicals

above are mixed in a ratio (45 to 23% of two genus siloxane materials out of the 100% total composition, or, when normalized on a 100% basis of the silicone ingredients alone: 66.2 to 33.8% for two ingredients, the percentages being based upon weight). This 66.2 to 34.8 ratio amount is within the Applicants Claim 1 ranges, 70:30 and 30:70 for hexamethyldisiloxane and octamethyltrisiloxane. The other examples provide additional component mixture examples for the siloxane genus chemicals in ranges from 87.8 to 12.2 or 12.2 to 87.8; these being the two-chemical mixture weight ratio limits (*Example 4 ibid.*) along with compositions comprising only one chemical from the genus providing obvious mixture ratios of 1:0 or 0:1 (*Examples 1 and 2 ibid.*).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the present invention to have made any of the compositions, using the ranges of genus chemicals as suggested by Rodelet, including those of the presently claimed invention.

Further, to address the Applicants arguments concerning establishing a case involving results effective variables to enable an assessment of unexpected results:

The Applicant has presented data to indicate that the evaporation of a mixture of a lower molecular weight siloxane chemical with a second, higher molecular weight, homologous siloxane chemical decreases when the second chemical is substituted (keeping the same weight percentage) with a higher molecular weight, homologous, siloxane chemical (see the Table provided, page 9 of the Instant Specification). The Applicant also presents evidence that the flash point of a high and low molecular weight

mixture is reduced when lower flash point, lower molecular weight material amount is increased relative to the same higher molecular weight, higher flash point material. The data provided by the Applicant also show that as the amount of lower molecular weight material increases, the evaporation rate increases. These results would be expected by one of ordinary skill in the art.

More importantly, however, the Applicant does not provide what would be expected by making a comparison of the composition with compositions of the closest prior art in order to demonstrate unexpected results.

It is the Burden on the Applicant to establish results are unexpected (MPEP 716.02). In addition, where a definite comparative standard may be used, the comparison must relate to the prior art embodiment relied upon (*In re De Blauwe*, 736 F.2d 699, 705, 222 USPQ 191, 196 (Fed. Cir. 1984)).

Therefore, lacking a standard basis of comparison, which would be met if the results shown were extended outside of the ranges claimed, and compared with expected results that would be present in the next closest prior art, the Applicant does not provide sufficient evidence for enabling examination to determine patentable, unexpected results.

Due to the lack of specification presentation, the Examiner did not address results effective variables as suggested by the Applicant's arguments.

B. Rodelet and Krzysik

Applicant's arguments filed for Claims 7 and 17-20 have been fully considered but they are not persuasive.

For Claims 7 and 17-20, Applicant argues that Rodelet does not disclose or suggest each and every feature of Claim 1. As such, Applicant additionally argues that a combination of Rodelet with Krzysik is not obvious.

As indicated above for Section A above, Rodelet does suggest and disclose examples for rendering Claim 1 obvious. Therefore, a combination of Rodelet and Krzysik is also found obvious.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to AARON GRESO whose telephone number is (571)270-7337. The examiner can normally be reached on M-F 0730-1700.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Seidleck can be reached on 571 272 1078. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/James J. Seidleck/
Supervisory Patent Examiner, Art Unit 1796

AJG